

Persons who permanently affix tangible personal property to real estate act as construction contractors and incur Use Tax liability on their cost price of tangible personal property they physically incorporate into realty. See 86 Ill. Adm. Code 130.1940. (This is a PLR).

August 27, 2001

Dear Xxxxx:

This Private Letter Ruling, issued pursuant to 2 Ill. Adm. Code 1200 (see <http://www.revenue.state.il.us/legalinformation/regs/part1200>), is in response to your letter of April 2, 2001 and the supplemental materials and revised letter you faxed to us on June 21 and August 16, 2001. Review of your request for a Private Letter Ruling disclosed that all information described in paragraphs 1 through 8 of subsection (b) of Section 1200.110 (see <http://www.revenue.state.il.us/legalinformation/regs/part1200>) appears to be contained in your request. This Private Letter Ruling will bind the Department only with respect to COMPANY for the issue or issues presented in this ruling. Issuance of this ruling is conditioned upon the understanding that neither COMPANY nor a related taxpayer is currently under audit or involved in litigation concerning the issues that are the subject of this ruling request.

In your letter, you have stated and made inquiry as follows:

We are in the business of selling and installing communications systems. We are requesting a private letter ruling with respect to issues relating to the following:

Aspects of our business:

- A. We sell and install communications equipment (ex: telephone and voicemail systems) and communication systems (voice and data cabling) to end-users.
- B. We sell communications equipment and systems to others, who subsequently install them.
- C. We sell communications equipment and systems to end-users without installation.
- D. We sell service contracts that provide for replacement equipment and repairs to end-users.
- E. We sell equipment including providing replacement equipment and parts.

Questions:

1. When we service systems, either under a quotation or on a T & M, using only parts like cable and jacks and fasteners, should we pay use tax or charge sales tax? (See attached proposed invoice)

2. When we service systems, either under a service contract or on an individually-billed basis (time and materials), should we pay use tax or charge sales tax for systems components that need to be replaced? (See attached proposed invoice)
3. When we sell and install phone or cabling systems, is the equipment subject to use tax or should we charge sales tax on the system? (See attached description of phone systems)
4. When we sell systems only to others who do self-install or subsequently install for a 3rd party, should we charge sales tax or pay use tax?
5. When we sell systems and components (no labor) to other installers and they provide a resale certificate, are we supposed to determine whether or not the certificate is appropriate and valid? What would our sales or use tax ramifications be?
6. Is it necessary to break out service from equipment on any of our invoices? If so, which categories should be broken out for itemization? (See attached proposed invoice)
7. If equipment is sold to a Wisconsin or Indiana company and the transaction takes place in Illinois and is shipped from Illinois to Wisconsin or Indiana, what are the sales/use tax ramifications for my organization?
8. If equipment is sold to a Wisconsin or Indiana company and the transaction takes place in Wisconsin or Indiana, what are the sales/use tax ramifications for my organization?

We have attached a copy of the sales tax audit summary for the period of January 1, 1996 through June 30, 1997. We are asking for a Letter of Ruling for proposed tax issues that might occur in the future.

I would appreciate any assistance that you can provide me regarding these issues.

Our responses to your questions are as follows:

Questions 1, 2 and 3.

In Illinois, persons who permanently affix tangible personal property to real estate act as construction contractors and incur Use Tax liability on their cost price of tangible personal property they physically incorporate into realty. See 86 Ill. Adm. Code 130.1940. Construction contractors act as retailers and incur Retailers' Occupation Tax liabilities when they sell items that remain tangible personal property when installed.

Please be informed that Section 1 of the Retailers' Occupation Tax Act (35 ILCS 120/1) provides that construction contracts for the improvement of real estate consisting of engineering, installation, and maintenance of voice, data, video, security, and all telecommunications systems, do not constitute engaging in a business of selling tangible personal property at retail within the meaning of the Act if they are sold at one specified contract price. Rather, such contractors incur Use Tax liability on their cost price of such systems.

You submitted copies of several documents for a job you contracted to perform for customer. You submitted a copy of your proposal for job ###. This shows you offering to install various items of telecommunications equipment for your customer at their location. You also submitted this proposal after the customer signed it on May 20, 2001. This signing of the proposal transformed it into a contract. You also submitted an invoice for this job dated June 20, 2001.

These documents do state one specified contract price. As a result, this is a transaction within the meaning of the above referenced statutory language and you would incur a Use Tax liability upon your cost price of the materials that you install for the customer and you do not incur Retailers Occupation Tax liability on this transaction.

So long as your transaction documents contain a customer signature as evidence of a contract and state one specified price, you will be subject to Use Tax on your cost price of materials when you contract for the improvement of real estate consisting of engineering, installation, and maintenance of voice, data, video, security, and all telecommunications systems.

In addition, when you perform subsequent repair or service work on one of these systems, the Department considers these to be construction contract situations. You would incur Use Tax on the cost price of supplies and repair parts permanently affixed to realty. Therefore on your attached Invoice ### for service work for TAXPAYER, you would incur Use Tax on your cost price of the material items.

During our August 16, 2001 phone conversation you advised that your company is not yet selling the service contracts that you refer to in Question 2. For your consideration we have enclosed a copy of 86 Ill. Adm. Code 140.141, the Department regulation that explains the tax consequences of servicing tangible personal property in different situations.

Questions 4 and 5.

When you sell tangible personal property you would incur Retailers' Occupation Tax liability unless the purchaser can document an exemption. One possible exemption is if the purchaser provides a Certificate of Resale that complies with 86 Ill. Adm. Code 130.1505. If the customers would incur Use Tax on their purchase of these items on the basis of their performing a construction contract as noted above, you would incur Retailers' Occupation Tax on your gross receipts and you would collect the complementary Use Tax from your customers.

Sellers should exercise good faith when accepting Certificates of Resale from purchasers. It has been proper for the Department to disallow Certificates of Resale that contain inaccurate information in the form of inactive or discontinued registration numbers. See Rock Island Tobacco v Department of Revenue (1980), 87 Ill. App. 3d 476, 478.

Question 6.

We understand from our telephone conversations that you asked this question to determine if the manner in which you type the invoice for your customer will impact the sales tax consequences. Please be advised that for your construction contracts for jobs that constitute the improvement of real estate through engineering, installation, and maintenance of voice, data, video, security, and telecommunications systems, so long as your transaction documents contain a signed contract that includes one specified contract price, you are authorized to show the cost of separate items. Thus the customer would know your proposed cost of a video camera, or other items, in case he wanted to do competitive pricing.

Please remember that it is very important that you do not list your Use Tax liability as tax due from your customer on the invoice or contract. Such a listing of tax due as a separate item would constitute an overcollection of tax. None of the documents that you submitted show you doing this, so you apparently are including this expense in your selling price.

Questions 7 and 8.

In our telephone conversations you stated that sometimes your company ships items to customers in Indiana or Wisconsin and that sometimes you sell and install the items in the Indiana or Wisconsin location of your customer. The latter occurs when you send a technician to the out-of-State customer location to install the items.

Enclosed is a copy of 86 Ill. Adm. Code 130.605 concerning Sales of Property Originating in Illinois. Subpart (c) of this regulation states that Retailers' Occupation Tax does not apply where sellers ship goods by carrier or by mail, according to the terms of agreements with purchasers, and the seller delivers the goods from a point within Illinois to a point outside Illinois and the goods are not to be returned to Illinois. Such sales are considered to be sales in interstate commerce and are exempt from Illinois Retailers' Occupation Tax and Use Tax, although there may be a tax liability in the other state involved in the transaction.

For this exemption to apply, the delivery outside of Illinois must be actually made. The documentation the seller must keep in its records includes, if shipped by common carrier, a waybill or bill of lading requiring delivery outside this State, 86 Ill. Adm. Code 130.605(e).

Transactions in which your technician travels and installs the equipment at your customer's out-of-State location are also not subject to Illinois tax. For these transactions you should maintain documentation in your records to show that the equipment was sold to and installed at the location of an out-of-State customer. However, you would probably incur a tax responsibility in the other State.

Sales are not deemed to be in interstate commerce if the purchaser or his representative receives the physical possession of the property in Illinois, even if such property is immediately transported outside of Illinois, 86 Ill. Adm. Code 130.605(a)(1) and (2). Therefore if a customer from another State purchases and receives possession of equipment from you in Illinois, you should charge Illinois tax unless another exemption can be documented.

The facts upon which this ruling are based are subject to review by the Department during the course of any audit, investigation, or hearing and this ruling shall bind the Department only if the material facts as recited in this ruling are correct and complete. This ruling will cease to bind the Department if there is a pertinent change in statutory law, case law, rules or in the material facts recited in this ruling.

I hope this information is helpful. If you have further questions concerning this Private Letter Ruling, you may contact me at (217) 782-2844. If you have further questions related to the Illinois sales tax laws, please visit our website at www.revenue.state.il.us or contact the Department's Taxpayer Information Division at (217) 782-3336.

Very truly yours,

Karl W. Betz
Associate Counsel

KWB:msk

Enc.